

## **REMARKS**

### **Summary of the Response**

The claims have not been amended. Claims 1-26 remain pending in this application. Reconsideration of the claims is respectfully requested.

### **Summary of the Rejections**

Claims 1-6, 13-18, and 20-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over U.S. Patent No. 6,044,363 to Mori. Claims 7-12, 19 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable (obvious) over Mori in view of U.S. Patent No. 6,012,045 to Barzilia. These rejections are respectfully traversed.

### **The Finality Of The Present Action Is Premature**

The Examiner made the present action final, but failed to set forth the basis for making this action final. In view that the Examiner merely repeated the same rejections on the same basis, and further in view that Applicant has clearly demonstrated the improper basis of the rejections in Applicant's earlier response and further in the response herein, Applicant respectfully submits that the present action should not be made final. The finality of the present action should be withdrawn.

### **Summary of the Invention**

It is clear from the Examiner's comments that he is confusing the roles between **buyer and sellers (in the disclosed embodiment, service providers)**. The Examiner failed to appreciate that in the present invention, the **sellers are the bidders**. **The buyer is not a bidder** in the present invention. The auction is open to **sellers** for bidding against each other, for the benefit of a **buyer**. The present invention is not directed to an auction in which several buyers bid for the goods or services of one seller.

In accordance with one aspect of the present invention, at the outset of the auction, the **buyer (not the sellers)** specifies the N best bids to be displayed for the **buyer's** consideration in awarding the bid to a **seller among all the seller bidders**. By evaluating the N best bids, the **buyer** has more choices in selecting a **seller bidder** from N **seller bidders**, based on factors other than best pricing. The higher the value of N, the more options for the **buyer**.

On the **seller bidder** side, since the value of N is made know to the **seller bidders** on the outset of the auction, **seller bidders** would bid in a way such that even when one of the sellers knows that it cannot bid the lowest price, such seller can still have a chance to compete by trying have its bid fall within the N best bids to obtain consideration by the **buyer**. By requesting to see fewer bids (smaller N), the **buyer** would have less opportunity to evaluate service providers based on factors other than pricing, thereby encouraging fierce price competition (e.g., when  $N=1$ , maximum price competition, but no option for the **buyer**). The reverse is true, when N is larger, the **buyer** has more choices in selection from N best bids from **sellers**, but the **sellers** would tend not to bid as aggressively, knowing that their bids would be considered as long as they fall within the N best bids.

The net effect is that the buyer by specifying N best bids, can effectively control the price/options tradeoff at the onset of the auction process, and encourage the bidders to provide

their lowest bids when pricing is important (small N). This lets the buyers make their final decision based on factors in addition to price, and yet at the lowest price possible given the options.

In another aspect of the present invention, a rating system is employed to rate the buyer's history of following through with bid awards in prior auctions initiated by the same buyer. The buyer's rating is made known to the seller binder before the service provider submits a bid, so that the seller binders can consider the buyer rating in deciding on bidding.

### Summary of Arguments

The Examiner repeated in verbatim the rejections in the first office action. Applicant remains in disagreement with the Examiner's basis of rejections. Applicant incorporates all the arguments previously presented in the response to the first office action. Further, Applicant makes additional arguments herein below to traverse the rejections.

### Traversal of Prior Art Rejection of Claims 1-6, 13-18, and 20-25 Based on Mori Alone

On the onset, Applicant failed to appreciate how Mori is even applicable to the present invention. **For Mori, the bidders are buyers, not sellers as is in the present invention.** Specifically referring to independent claims 1, 13 and 25, Mori does not teach or suggest an auction system or process in which the **buyer submits a service request for auctioning, the buyer specifying the number N of best bids** to be consider from the auction.

The Examiner pointed to specific sections in Mori, where support for the claimed limitations are supposed to be found. However, Applicant failed to follow how the sections in Mori as referenced by the Examiner in the office action are applicable. For example, Applicant

does not see where on col. 1, line 59-col. 2, line 7, and col. 14, lines 10-34, did Mori disclose the buyer specifying at the start of the auction the number N of best bids to be considered from the auction, as proposed by the Examiner. These sections instead recites:

“It is a further object of the present invention to provide an electronic bid, auction and sale system wherein the computer system establishes a virtual showroom which electronically displays the products and services offered for sale and certain other information, such as manufacturer’s suggested retail price, minimum opening bid price and bid cycle data which enables the potential purchaser or customer to view the product, view information regarding the product and place a bid or a number of bids to purchase the product.

It is an additional object of the present invention to permit the user to place a reasonable number of bids (up to 8 bids in a preferred embodiment) on a single product or service whereby the system accepts (a) the highest bid submitted by all bidding customers and (b) excludes all bids greater than the lowest high bid from a group of bids submitted by a single bidder for the particular product or service.”

From the above quoted sections in Mori, it is clear that the Mori auction system involves multiple buyers bidding to purchase a product. They each can submit multiple bids (e.g., up to 8 bids). This is not the same as the inventive concept in which the buyer is not the bidder, but the buyer specifies N best bids (from the seller bidders) to be considered from the auction, and further the buyer selects a bidder (seller) from one of the N lowest bids or choosing not to execute, as required by claims 1, 13 and 25 of the present invention.

In paragraph 31 of the present office action, the Examiner stated that “the number of bids that buyers wants to see, Bs is a subset of the number of bids the buyer wants to place, Bp, so that Bs is less than or equal Bp, so that Bs is derivable from Bp.” Clearly this line of reasoning is irrelevant to the present invention, where the buyer in the present invention does not place bids with respect to the seller. The present invention provides for sellers to place bids, and the buyer to specify the number of seller bids that it will consider in making a final selection in award the bid to a particular seller bidder.

In paragraph 16 of the present office action, the Examiner set forth the basis for rejecting claim 20, but failed to mention how Mori teaches or suggests the buyer rating limitation in claim 20. In fact, the Examiner realizes this deficiency of Mori, as evident in the following paragraph 17 in the present office action, in which the Examiner set forth the basis of rejection of claim 21, the Examiner conceded "Mori fails to teach a buyer's rating". Then the Examiner referenced the Barzilai reference to make up for such deficiency of Mori. Such basis for rejection is highly improper, since claims 20 and 21 were rejected as being obvious over Mori alone. (See, paragraph 3 in the present office action.) Further, the Examiner improperly referenced Barzilai only for claim 21, and therefore claim 20 remains rejected based on Mori alone and Barzilai has no bearing on claim 20.

Since the Examiner failed to properly set forth the basis of at least the rejection of claim 20 and claim 21 in the present action, should the Examiner maintains his rejection, it would have to be based on new grounds that were not specified in the present office action. Such new grounds of rejection are not necessitated by any claim amendment, hence further office action should not be made final, in order not to unreasonably compromise Applicant's opportunity to fully respond to such new rejections.

Regardless of the foregoing deficiencies in the Examiner's rejection, it is clear that Barzilai does not make up for the deficiencies of Mori. Claim 20 specifically recites that the potential **bidders (sellers)** consider the buyer rating regarding follow-through of bids, in deciding on bidding. This is different from the buyer profile given to the **buyer bidders in Barzilai** and how the buyer profile is utilized.

In view of the foregoing, Applicant respectfully submits that the independent claims 1, 13, 20 and 25, and all the claims dependent there from, are not rendered obvious over Mori. Accordingly, the claims 1-6, 13-18 and 20-25 are patentable over Mori.

Traversal of Prior Art Rejection of Claims 7-12, 19 and 26 based on Mori In Combination With Barzilia

Barzilia does not make up for the deficiencies of Mori. Barzilia, like Mori, disclosed a system in which a **buyer bidder** (referred to as a “user” in Barzilia, in quite a different context) can set the number of bids that the bidder can place on a product or service that is being auctioned. The sellers do not bid in Barzilia, in contrast to the **seller bidders** in the present invention.

Barzilia, like Mori, also is not directed to a process or system in which a rating is provided to the **buyer** who submitted a service requested to a broker for auctioning among **seller bidders**, as required by dependent claim 7 and 19, and independent claims 8 and 26. In Barzilia, **buyers are bidders**. The **transaction** history for the bidding buyers is provided in Barzilia. In contrast, a **bid follow-through rating** is provided for the **non-bidding buyer** in the present invention. Applicant respectfully submits that there is absolutely no teaching or suggestion from a fair reading of Barzilia, any motivation to provide a buyer rating that includes information on the buyer's follow-through of bids in prior auctions.

The present invention provides the **buyer's** history of following through with bid awards in prior auctions initiated by the same buyer. The buyer's rating is made known to the **seller binder** before the service provider submits a bid, so that the seller binders can consider the buyer rating in deciding on bidding. Because the **buyer** can have N best bids, he is not obligated to

award the bid to any one of the N sellers. The buyer may back out of the auction and not award the bid to any seller binders. It would provide sellers comfort to know the frequency of the buyer following through with the bids for jobs that he submitted for auctioning by sellers. **This is not a rating for the seller bidders.** This rating system deters a buyer from casually shopping for pricing with little chance of following through with the auction. A buyer who frequently submits jobs without executing them will get a low rating. A low rating discourages service providers from bidding, thereby decreasing the competitiveness of an auction. As a result, a low-rated buyer should expect to pay more for the service provided. Consequently, a buyer will be discouraged from submitting jobs that have a low chance of occurring. The buyer follow-through rating gives the seller bidders a better sense of the buyer's commitment prior to deciding on allocating resources to participate in bidding at the auction.

In prior art auctions such as Mori and Barzilai, in which several buyers bid for the highest purchase price to a seller, the auction process is initiated by the seller. The seller has no control over the buyer history and who buyer may submit bids to the seller. Further, once the auction is over, the bid is awarded to the highest buyer bidder. Such buyer is obligated to consummate the transaction. Thus in that situation, the follow-through rating of a buyer would not be all that meaningful or relevant to the seller, as the buyer who bid the highest price has to consummate the transaction regardless of his rating (e.g., his credit card would be automatically charge if he is the highest bidder). In some prior art systems, the seller is rated, such as to give comfort to the buyers as to which seller provides acceptable post-auction services, reliability, etc.

Accordingly, even if Mori and Barzilai can somehow be combined in the manner suggested here only by the Examiner, the present invention is not obtained. Further, the combination would not teach a follow-through rating for the buyers which is considered by the

seller binders prior to bidding. Further, such combination can only take place as a result of improper hindsight reconstruction given the disclosure of the present invention.

In view of the foregoing, Applicant respectfully submits that the dependent claims 7 and 19 from claim 1 and claim 13 respectively, and the independent claims 8 and 26 and all the claims dependent there from, are not rendered obvious over Mori in view of Barzilai. Accordingly, the claims 7-12, 19 and 26 are patentable over Mori and Barzilai.


### Conclusion

In view of all the foregoing, Applicant submits that the finality of the present office action is premature, and that the claims pending in this application are patentable over the references of record and are in condition for allowance. Such action at an early date is earnestly solicited.

In the interest of forwarding the case to allowance without unnecessary delays, the Examiner is invited to call the undersigned representative to discuss any outstanding issues that may not have been adequately addressed in this response.

Respectfully submitted,

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